

STATE BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 30, 1999

Reno, Nevada

ITEM: IV.

SUBJECT: Public hearing for the consideration of permanent regulation amendment to Chapter 590 of the Nevada Administrative Code (NAC) relating to the State Petroleum Fund.

DISCUSSION: Discussion has been previously provided regarding the concern for owners/operators to provide adequate notice in event that a third party liability claim may be made against the Petroleum Fund. This Resolution includes amended language to NAC 590 to provide a regulatory requirement for such notice.

The proposed regulation amends NAC 590.700 to 590.790 by requiring an owner or operator of a petroleum storage tank enrolled in the Petroleum Fund, to promptly notify the Nevada Division of Environmental Protection in the event that a third party liability claim may be made against the Fund. Additionally, it is proposed that failure of an owner or operator to provide such notice, may become cause for denial of a third party liability reimbursement from the Fund. It is further proposed that third party liability claims will only be authorized for reimbursement upon receipt of a court order or upon the Board's approval of a negotiated settlement.

At the August 27, 1998 meeting of the State Board to Review Claims, the Board adopted the proposed amendment as a 'temporary' regulation. The effective date for the temporary regulation will soon expire and this resolution is now being proposed to effect the notice requirement as a permanent regulation. Public notice of the proposed permanent regulation has been provided with the posting of public announcements, publication in the daily newspapers for Elko, Las Vegas and Reno, and inclusion on the Division's website. No comments opposing the proposed regulation have been received.

RECOMMENDATION: **Adoption** of Resolution No. 2000-01 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 2000-01

Resolution to Amend NAC Chapter 590 Adopting Required Notice for Third Party Damages

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. NRS 590.880 provides \$250,000 coverage for damages to a person other than this state or the operator for home heating oil tanks of 1,100 gallons or less.
2. NRS 590.890 provides \$1,000,000 for damages to any person other than this state or the operator of the tank for storage tanks other than home heating oil.
3. NAC 590.710 defines "damages" to mean any money the operator of a storage tank becomes legally obligated to pay as damages because of bodily injury or property damage to any person other than the state or the operator caused by a discharge.
4. It is in the best interest of the Petroleum Fund to be advised of any pending third party liability claims which may be brought against the Fund and to have legal counsel present at any negotiated settlement for such claims.
5. Attachment "A", which is made a part of this Resolution, contains the proposed amended language to NAC 590. Similar language was adopted as a temporary regulation by the Board at the August 27, 1998 meeting after public notice was provided and public workshops held (see Resolution 99-01).
6. Public notices of this proposed amendment were distributed pursuant to the requirements specified by NRS 233B.0603. Notices were published on August 25, 1999 in the *Elko Daily Free Press*, *The Las Vegas Review Journal*, and in *The Reno Gazette Journal*. Notice was also provided on the Division's website. A copy of the Public Notice is included in Attachment "B" of this resolution.
7. No objectional or adverse public comments have been received regarding the proposed amendment.

THEREFORE BE IT RESOLVED:

That the Board adopts the proposed amendment to NAC 590 as contained in Attachment "A" of this resolution as a permanent regulation.

I, John Haycock, Chairman, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 30, 1999.

John Haycock, Chairman
State Board to Review Claims

ATTACHMENT "A"

PROPOSED PERMANENT REGULATION OF THE NEVADA STATE BOARD TO REVIEW CLAIMS

September 30, 1999

LCB File No. R001-99

EXPLANATION - Matter in *italics* is new, matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: NRS 590.830

Section 1. Chapter 590 of NAC is hereby amended by adding thereto a new section to read as follows:

1. An operator shall notify the division of a civil action brought against him by another person for damages alleged to have been caused by a discharge from the storage tank of the operator. The notice must be in writing and submitted to the division within 60 days after the date the operator is properly served with the summons and a copy of the complaint that commenced the civil action.

2. The board may:

(a) Consider failure to notify the division pursuant to the provisions of subsection 1 as a basis for denial of payment from the fund.

(b) Excuse a failure to provide notice pursuant to the provisions of subsection 1 upon demonstration of good cause for the failure to comply.

3. An operator who is required to provide notice pursuant to the provisions of subsection 1 and who seeks payment from the fund for liability for damages must submit, as a supporting document:

(a) A copy of a final judgement that has been entered with a court and that orders the operator to pay damages; or

(b) If the operator and the other party to the civil action settled the claim, a copy of the settlement agreement.

The board will not authorize payment from the fund unless it has received the order of judgement or it has received the settlement agreement and has approved the terms of such agreement.

Sec. 2. NAC 590.700 is hereby amended to read as follows:

590.700 As used in NAC 590.700 to 590.790, inclusive, *and section 1 of this act*, unless the context otherwise requires:

1. “Board” means the board to review claims.
2. “Division” means the division of environmental protection of the state department of conservation and natural resources.
3. “Fund” means the fund for cleaning up discharges of petroleum.
4. “Portable storage tank” means a storage tank with a capacity of 60 gallons or more that is above the ground and may be moved without disassembly of the tank to more than one location for the temporary storage of petroleum.
5. “Registered storage tank” means a storage tank operated by a person who is required to or who elects to register it.
6. “Storage tank” has the meaning ascribed to it in NAC 590.710.

ATTACHMENT "B"

NOTICE OF PUBLIC HEARING AND INTENT TO ACT UPON PERMANENT REGULATION Nevada State Board to Review Claims (Petroleum Fund)

The Nevada State Board to Review Claims (Petroleum Fund) will hold a public hearing beginning at **10:30 a.m. on Thursday, September 30, 1999 at the Legislative Counsel Bureau Conference Room, Grant Sawyer Building, 555 E. Washington Ave., Las Vegas, Nevada.**

The purpose of this hearing is to receive comments from all interested persons regarding adoption of a proposed permanent regulation to Nevada Administrative Code, **NAC 590**. If no person directly affected by the proposed action appears to request time to make an oral presentation, the State Board to Review Claims may proceed immediately to act upon any written submission.

The proposed regulation amends NAC 590.700 to 590.790 by requiring an owner or operator of a petroleum storage tank enrolled in the Petroleum Fund, to promptly notify the Nevada Division of Environmental Protection in the event that a third party liability claim may be made against the fund. It is proposed that failure of an owner or operator to provide such notice, may become cause for denial of a third party liability reimbursement from the fund. It is further proposed that third party liability claims will only be authorized for reimbursement upon receipt of a court order or upon the Board's approval of a negotiated settlement.

The proposed regulation is estimated to have no immediate economic effect on business. No changes are proposed in either the fees paid to support the fund or in the total amount of coverage provided by the fund. While there have been few third party liability suits brought against petroleum storage tank owners in Nevada; the potential exists that the Petroleum Fund could be negatively impacted if several such liability claims were made. The proposed regulation may yield a long-term economic benefit to enrolled tank owners from any cost savings achieved by the notice requirement.

The proposed regulation has no anticipated adverse effect on the public, either immediate or long-term. The public may see long-term benefits associated with prevention of any large, unexpected reductions in the Petroleum Fund. The proposed regulation affects the practice of the state fund, thus there is no commensurate federal law or regulation. The proposed regulation does not overlap or duplicate any known regulations of another state or local governmental agency. There is no additional cost to the agency for enforcement and the regulation does not add a new fee, nor increase an existing fee.

Persons wishing to comment upon the proposed regulation may appear at the scheduled public hearing to submit oral testimony and evidence. Those wishing to testify for more than five minutes should submit their request in writing by September 22, 1999, to the Board to Review Claims, c/o Karen Fleming, NDEP, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851.

Comments, data, views, or arguments may also be submitted in written form to the Board to Review Claims, c/o Mike Leigh, NDEP, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851. Written submissions must be received at least five days before the scheduled public hearing.

A copy of this notice and the proposed regulation amendment will be on file for inspection by members of the public during business hours at the Department of Museums, Library and Arts, 100 Stewart Street, Carson City, Nevada; and the Division of Environmental Protection at 123 West Nye Lane, Room 206, Carson City, Nevada and at 555 East Washington Street, Suite 4300, Las Vegas, Nevada. In addition, copies of the notice and regulation will be available for inspection at the main public library in all counties in which an office of the agency is not maintained. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request.

Pursuant to NRS 233B.0603 © the provisions of NRS 233B.064 (2) is hereby provided:

"Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption".

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify, in writing, the Board to Review Claims, c/o Karen Fleming, 333 West Nye Lane, Room 138, Carson City, Nevada, 89706-0851, facsimile (775) 687-6396, or by calling (775) 687-4670, extension 3047, no later than September 22, 1999

This public notice has been posted at the Regional Transportation Commission in Reno, the Department of Museums, Library and Arts in Carson City, the Clark County Commission Chambers in Las Vegas, the Washoe County Commission Chambers in Reno, and at the offices of the Department of Conservation and Natural Resources in Carson City and Las Vegas.